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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 TERRY FABRICANT individually
11 and on behalf of all others similarly
12 situated,

13 Plaintiff,

14 v.

15 SUNSET WEST LEGAL GROUP,
16 PC
17 and
18 QUINTESSA LLC D/B/A THE
19 INJURY HELP NETWORK

20 Defendant.

Case No.

**COMPLAINT FOR
INJUNCTION AND DAMAGES**

Class Action

JURY TRIAL DEMAND

21 Plaintiff Terry Fabricant (“Mr. Fabricant”), by his undersigned counsel, for
22 this class action complaint against Sunset West Legal Group, PC (“Sunset”) and
23 Quintessa LLC d/b/a The Injury Help Network (“Quintessa”) and their present,
24 former and future direct and indirect parent companies, subsidiaries, affiliates,
25 agents and related entities, allege as follows:
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I. INTRODUCTION

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3 1. Nature of Action: As the Supreme Court has explained, “Americans
4 passionately disagree about many things. But they are largely united in their
5 disdain for robocalls. The Federal Government receives a staggering number of
6 complaints about robocalls—3.7 million complaints in 2019 alone. The States
7 likewise field a constant barrage of complaints. For nearly 30 years, the people’s
8 representatives in Congress have been fighting back. As relevant here, the
9 Telephone Consumer Protection Act of 1991, known as the TCPA, generally
10 prohibits robocalls to cell phones and home phones.” *Barr v. Am. Ass’n of Political*
11 *Consultants*, 140 S. Ct. 2335, 2343 (2020).
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15 2. This case involves a campaign by Sunset to generate personal injury
16 leads for its law firm using vendors like Quintessa to place illegal robocalls in
17 alleged violation of the TCPA.
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19 3. Because telemarketing campaigns generally place calls to thousands
20 or even millions of potential customers *en masse*, Plaintiff brings this action on
21 behalf of a proposed nationwide class of other persons who received illegal
22 telemarketing calls from or on behalf of Defendant.
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II. PARTIES

4. Plaintiff is an individual.

5. Defendant Sunset West Legal Group, PC is a California corporation located in this District.

6. Defendant Quintessa LLC, which does business under the fictitious name “The Injury Help Network,” is an Oklahoma City-based provider of motor vehicle accident leads for attorneys.

III. JURISDICTION AND VENUE

7. Jurisdiction. This Court has federal-question subject matter jurisdiction over Plaintiff’s TCPA claims pursuant to 28 U.S.C. § 1331 because the TCPA is a federal statute. 47 U.S.C. § 227; *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 372 (2012).

8. Personal Jurisdiction: This Court has general personal jurisdiction over Defendant Sunset because it is headquartered and has its principal place of business in this District. This Court has specific personal jurisdiction over Quintessa because it contracted with a corporation headquartered in this District to send illegal robocalls for and generate leads which would be performed in this District.

1 implementing the TCPA, such calls are prohibited because, as Congress found,
2 automated or prerecorded telephone calls are a greater nuisance and invasion of
3 privacy than live solicitation calls, and such calls can be costly and inconvenient.
4

5 14. In 2013, the FCC required prior express written consent for all
6 autodialed or prerecorded telemarketing calls (“robocalls”) to wireless numbers
7 and residential lines. Specifically, it ordered that:
8

9 [A] consumer’s written consent to receive telemarketing robocalls must
10 be signed and be sufficient to show that the consumer: (1) received
11 “clear and conspicuous disclosure” of the consequences of providing
12 the requested consent, i.e., that the consumer will receive future calls
13 that deliver prerecorded messages by or on behalf of a specific seller;
14 and (2) having received this information, agrees unambiguously to
15 receive such calls at a telephone number the consumer designates.[] In
16 addition, the written agreement must be obtained “without requiring,
17 directly or indirectly, that the agreement be executed as a condition of
18 purchasing any good or service.[]”

19 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of*
20 *1991*, 27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).

21 **B. Defendant’s Unsolicited Pre-Recorded Telemarketing to Plaintiff**

22 15. Plaintiff is, and at all times mentioned herein was, a “person” as
23 defined by 47 U.S.C. § 153(39).

24 16. Plaintiff’s cellular telephone number is (818) XXX-XXXX.

25 17. Mr. Fabricant never provided his prior express written consent to
26 receive calls from the Defendant.
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1 18. Despite this, the Defendants sent him at least three pre-recorded
2 telemarketing calls on April 20, 2024, from the Caller ID 818-764-0085.

3 19. The pre-recorded telemarketing calls all played an identical
4 prerecorded message, stating that the caller had information that the Plaintiff had
5 been involved in an accident in the last two years and to press one.
6

7 20. The Plaintiff interacted with the recorded message to identify the
8 caller.
9

10 21. The Plaintiff was then connected to a person from the “injury help
11 network” who asked him about accidents who provided a call back number of 888-
12 306-5365.
13

14 22. Thereafter, that number was called to ascertain information as to who
15 was calling Mr. Fabricant illegally. The individuals stated they were from the
16 “injury help network,” and relentlessly sent text messages and voicemails,
17 including from the phone number 805-892-6365 and providing the callback
18 number of 888-501-1788.
19

20 23. The text message stated that “Over the next 14 days, I will be
21 following up with you regarding any questions you may have. The law firm will be
22 investigating your potential case and after accepting your case they will be pulling
23 the police report, speaking with the insurance company, and setting you up with
24 the treatment necessary, amongst many other things.”
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1 24. This text message in particular was sent, understood, and meant to any
2 reasonable person that Quintessa was acting as an agent for Sunset in onboarding a
3 potential client and processing a legal personal injury claim.
4

5 25. Furthermore, Quintessa evidently had the authority to sign up clients
6 using Sunset's retainer agreement.
7

8 26. Defendant Sunset was later identified as the law firm that hired
9 Quintessa to make the illegal calls for it and generate the Plaintiff's lead.
10

11 27. Defendant Sunset ratified Quintessa's conduct by accepting the lead
12 and referral generated as a result of Quintessa's illegal telemarketing conduct.
13

14 28. For more than twenty years, the FCC has explained that its "rules
15 generally establish that the party on whose behalf a solicitation is made bears
16 ultimate responsibility for any violations." *In re Rules and Regulations*
17 *Implementing the Telephone Consumer Protection Act*, 10 FCC Rcd. 12391, 12397
18 ¶ 13 (1995).
19

20 29. In 2008, the FCC likewise held that a company on whose behalf a
21 telephone call is made bears the responsibility for any violations.
22

23 30. The FCC has instructed that sellers such as Sunset may not avoid
24 liability by outsourcing telemarketing to third parties, such as Quintessa:
25

26 [A]llowing the seller to avoid potential liability by outsourcing its telemarketing
27 activities to unsupervised third parties would leave consumers in many cases
28 without an effective remedy for telemarketing intrusions. This would particularly
be so if the telemarketers were judgment proof, unidentifiable, or located outside

1 the United States, as is often the case. Even where third-party telemarketers are
2 identifiable, solvent, and amenable to judgment, limiting liability to the
3 telemarketer that physically places the call would make enforcement in many cases
4 substantially more expensive and less efficient, since consumers (or law
5 enforcement agencies) would be required to sue each marketer separately in order
6 to obtain effective relief. As the FTC noted, because “sellers may have thousands
7 of ‘independent’ marketers, suing one or a few of them is unlikely to make a
8 substantive difference for consumer privacy.”

9 *In re DISH Network, LLC*, 28 FCC Rcd. 6574, 6588 ¶ 37 (2013) (cleaned up).

10 31. In 2013, the FCC held that a corporation or other entity that contracts
11 out its telephone marketing “may be held vicariously liable under federal common
12 law principles of agency for violations of either section 227(b) or section 227(c)
13 that are committed by third-party telemarketers.” *Id.* at 6574 ¶ 1.

14 32. Sunset is liable for telemarketing calls placed by Quintessa and
15 transferred to Sunset to generate customers for Sunset, including the Plaintiff.

16 33. Sunset was interested in hiring a lead generator that could make phone
17 calls to potential customers, vet potential clients, and get clients in the door who
18 had already signed and executed retainer agreements with Sunset, so it hired
19 Quintessa, as Quintessa openly advertises this process as its specialty.

20 34. To do so, it hired Quintessa to orchestrate an *en masse* telemarketing
21 campaign.

22 35. Sunset controlled the day-to-day activities of Quintessa by providing
23 the specific criteria for the clients it would accept and required its vendors,
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1 including Quintessa, to adhere to those criteria.

2 36. For instance, Sunset directed and authorized Quintessa to intake and
3 provide retainers to clients and for Quintessa to represent Sunset in such
4 contractual negotiations on Sunset's behalf.
5

6 37. Sunset authorized Quintessa to use the Sunset name, authorized
7 Quintessa representatives to state that they were going to receive calls from Sunset
8 and inform potentially interested persons that Sunset would handle the
9 administrative aspects of the legal claim, like obtaining police reports and other
10 records.
11

12 38. Sunset would only compensate Quintessa if Quintessa provided
13 Sunset with a client who had signed Sunset's retainer agreement.
14

15 39. Sunset also could have prohibited Quintessa from using pre-recorded
16 messages to generate leads.
17

18 40. It did not.

19 41. Finally, Sunset could have terminated Quintessa once it learned of
20 Quintessa's illegal marketing conduct.
21

22 42. It did not.

23 43. This conduct is especially alarming because Quintessa is a habitual
24 offender that is well known in the TCPA space, having been sued multiple times
25 for using prerecorded messages to generate leads in violation of the TCPA.
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1 44. A reasonable seller would investigate why the telemarketers it has
2 hired to generate leads are being sued for illegal lead generation conduct.

3 45. Moreover, a reasonable seller would also investigate into the reasons
4 why their marketer would be calling numbers using highly illegal prerecorded e
5 messages.
6

7 46. Indeed, Sunset could have investigated if the leads it received were
8 generated based on prerecorded calls, whether the leads purchased were legitimate,
9 or if Quintessa was using prerecorded messages at all.
10

11 47. It did not.

12 48. Sunset hired Quintessa without a proper investigation and did not
13 terminate them when they were informed of Quintessa's illegal calling conduct.
14

15 49. As such, they knowingly ratified Quintessa's conduct.

16 50. Sunset accepted the Plaintiff's lead and then utilized it for a benefit by
17 continuing to promote its services to him.
18

19 51. The 2013 FCC ruling holds that called parties may obtain "evidence
20 of these kinds of relationships . . . through discovery, if they are not independently
21 privy to such information." *In re DISH Network*, 28 FCC Rcd. 6592-93 ¶ 46.
22

23 Evidence of circumstances pointing to apparent authority on behalf of the
24 telemarketer "should be sufficient to place upon the seller the burden of
25 demonstrating that a reasonable consumer would not sensibly assume that the
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1 telemarketer was acting as the seller's authorized agent." *Id.* at 6593 ¶ 46.

2 52. Plaintiff's privacy has been violated by the above-described
3 telemarketing calls.
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5 53. Plaintiff never provided his consent or requested the calls.

6 54. The calls were all unwanted, nonconsensual encounters.
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8 55. Plaintiff and all members of the Class, defined below, have been
9 harmed by the acts of Defendants because their privacy has been violated and they
10 were annoyed and harassed. In addition, the calls occupied their telephone lines,
11 storage space, and bandwidth, rendering them unavailable for legitimate
12 communication, including while driving, working, and performing other critical
13 tasks.
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16 V. CLASS ACTION ALLEGATIONS 17

18 56. Class Definition. Pursuant to Fed. R. Civ. P. 23(b)(2) and (b)(3),
19 Plaintiff bring this case on behalf of the Class (the "Class") defined as follows:
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21 **Robocall Class:** All persons within the United States: (1) to whose
22 cellular telephone number (2) Sunset (or an agent acting on behalf of
23 Sunset) placed a call (3) within the four years prior to the filing of the
Complaint (4) using a pre-recorded message.

24 57. Excluded from the Class are counsel, Defendants, any entities in
25 which Defendants have a controlling interest, Defendants' agents and employees,
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1 any judge to whom this action is assigned, and any member of such judge's staff
2 and immediate family.

3 58. The Class, as defined above, is identifiable through telephone records
4 and telephone number databases.

5 59. The potential members of the Class likely number at least in the
6 hundreds because of the *en masse* nature of telemarketing calls.

7 60. Individual joinder of these persons is impracticable.

8 61. Additionally, the disposition of the claims in a class action will
9 provide substantial benefit to the parties and the Court in avoiding a multiplicity of
10 identical suits.

11 62. Plaintiff is a member of the Class and will fairly and adequately
12 represent and protect the interests of the Class as he has no interests that conflict
13 with any of the class members.

14 63. Plaintiff and all members of the Class have been harmed by the acts of
15 Defendants, including, but not limited to, the invasion of their privacy, annoyance,
16 waste of time, and the intrusion on their telephone that occupied it from receiving
17 legitimate communications.

18 64. This class action complaint seeks injunctive relief and money
19 damages.

1 65. There are numerous questions of law and fact common to Plaintiff and
2 members of the Class. These common questions of law and fact include, but are
3 not limited to, the following:
4

5 a. whether Defendants systematically made pre-recorded
6 telemarketing calls;
7

8 b. whether Defendants are vicariously liable for any calls placed
9 by telemarketing vendors, if any, together with the correspondent degree of
10 liability as among themselves;
11

12 c. whether Defendants made calls to Plaintiff and members of the
13 Class without first obtaining prior express written consent to make the calls; and
14

15 d. whether members of the Class are entitled to treble damages
16 based on the willfulness of Defendants' conduct.
17

18 66. Plaintiff's claims are typical of the claims of the Class.

19 67. Plaintiff's claims, like the claims of Class, arise out of the same
20 common course of conduct by Defendants and are based on the same legal and
21 remedial theories.
22

23 68. Common questions of law and fact predominate over questions
24 affecting only individual class members, and a class action is the superior method
25 for fair and efficient adjudication of the controversy. The only individual question
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1 concerns identification of class members, which will be ascertainable from records
2 maintained by Defendants and/or their agents.

3 69. A class action is the superior method for the fair and efficient
4 adjudication of this controversy. Class-wide relief is essential to compel
5 Defendants to comply with the TCPA. The interests of individual members of the
6 Class in individually controlling the prosecution of separate claims against
7 Defendants are small because the damages in an individual action for violation of
8 the TCPA are small. Management of these claims is likely to present significantly
9 more difficulties than are presented in many class claims. Class treatment is
10 superior to multiple individual suits or piecemeal litigation because it conserves
11 judicial resources, promotes consistency and efficiency of adjudication, provides a
12 forum for small claimants, and deters illegal activities. There will be no significant
13 difficulty in the management of this case as a class action.

14 70. Defendants have acted on grounds generally applicable to the Class,
15 thereby making final injunctive relief and corresponding declaratory relief with
16 respect to the Class appropriate on a class-wide basis. Moreover, on information
17 and belief, Plaintiff alleges that the telephone solicitation calls made by Defendants
18 and/or their affiliates, agents, and/or other persons or entities acting on Defendants'
19 behalf that are complained of herein are substantially likely to continue in the
20 future if an injunction is not entered.

FIRST CAUSE OF ACTION
Telephone Consumer Protection Act
Violations of 47 U.S.C. § 227(b)(3)
(On Behalf of Plaintiff and the Pre-Recorded Call Class)

71. Plaintiff repeats the prior allegations of this Complaint and incorporates them by reference herein.

72. The foregoing acts and omissions of the Defendants and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf constitute numerous and multiple violations of the TCPA, 47 U.S.C. § 227, by making calls, except for emergency purposes, to the cellular telephone numbers of Plaintiffs and members of the Class delivering pre-recorded messages.

73. As a result of Defendants' and/or their affiliates, agents, and/or other persons or entities acting on Defendants' behalf's violations of the TCPA, 47 U.S.C. § 227, Plaintiff and members of the Class presumptively are entitled to an award of \$500 in damages for each and every call made to their residential or cellular telephone numbers using an artificial or prerecorded voice in violation of the statute, pursuant to 47 U.S.C. § 227(b)(3)(B).

74. If the Defendants' conduct is found to be knowing or willful, the Plaintiff and members of the Class are entitled to an award of up to treble damages.

75. Plaintiff and members of the Class are also entitled to and do seek injunctive relief prohibiting Defendants and/or their affiliates, agents, and/or other

1 persons or entities acting on Defendants' behalf from violating the TCPA, 47
2 U.S.C. § 227, by making calls, except for emergency purposes, to any cellular
3 telephone numbers using an artificial or prerecorded voice in the future.
4

5 **PRAYER FOR RELIEF**

6
7 **WHEREFORE**, Plaintiff, individually and on behalf of the Class, prays for
8 the following relief:

- 9 A. Certification of the proposed Class;
10
11 B. Appointment of Plaintiff as representative of the Class;
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13 C. Appointment of the undersigned counsel as counsel for the Class;
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15 D. A declaration that Defendants and/or their affiliates, agents, and/or
16 other related entities' actions complained of herein violated the TCPA;
17
18 E. An order enjoining Defendants and/or their affiliates, agents, and/or
19 other persons or entities acting on Defendants' behalf from making calls, except
20 for emergency purposes, to any cellular telephone numbers using an artificial or
21 prerecorded voice in the future;
22
23 F. An award to Plaintiff and the Class of damages, as allowed by law;
24 and
25 G. Orders granting such other and further relief as the Court deems
26 necessary, just, and proper.
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VI. DEMAND FOR JURY

Plaintiff demand a trial by jury for all issues so triable.

VII. SIGNATURE ATTESTATION

The CM/ECF user filing this paper attests that concurrence in its filing has been obtained from each of its other signatories.

RESPECTFULLY SUBMITTED AND DATED this 22nd day of May,
2024.

/s/ Dana J. Oliver

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